IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETTION NO. 1529 OF 1998

1. Anil Sadanand David,

2. Mrs. Sujata Anil David,

Both Indian Inhabitants,
residing at village Nazgaon,
Raywadi, Taluka Alibag,
District Raigad. ... Petitioners

Versus

1. State of Maharashtra,

2. Collector, District Raigad
having his office at Collector's
Office, Alibag.

3. Tahsildar, Alibag, having his
office at Alibag.

4. Circle Officer, Alibag. ... Respondents.

Mr. Zubin B. Kamdin with Mr. P. Paul i/by Nanu Hormasjee for the Petitioners.

Mr. S.R. Nargolkar, A.G.P. for Respondent Nos. 1 to 4.

CORAM : F.I. REBELLO &
S.P. KUKDAY,JJ.
DATED : JANUARY 28, 2005

ORAL JUDGMENT (Per F.I. Rebello,J):

1. The Petition was admitted on 1.7.1998. The Petitioner has approached this court against the notice dated 31,1,1998 issued by the Tahsildar, Alibag, wherein it is pointed out that the construction had been put up without obtaining requisite permission. The Petition also challenges the order dated 27.2.1998 of the Collector setting

out that the Petitioner had not obtained construction permission from the office and that as such there is no sanction for the building plan as submitted and to notice dated 12.3.1998 issued by the Survey Officer, Alibag contending that the Petitioner had failed to comply with orders dated 27.2.1998 and 10.3.1998 of the Collector and Tahsildar. It transpires that the property had been sealed. A learned Division Bench of this court by its order dated 27.3.1998 directed that the seal on the lock put by the Circle Officer, Alibag should be removed. At the same time, Petitioners were also directed that they shall not make any development of whatsoever nature in respect of the property. That interim relief was continued as can be seen from the order dated 1.7.1998. While admitting the Petitioner, the learned Division Bench noted that the plans were approved by the Collector himself.

2. A few facts may now be set out.

. There is no dispute that the petitioners are the owners of the land. On 26.9.1995, they applied to the Gram Panchayat for permission and N.O.C. to construct compound wall. By N.O.C. dated 29.11.1995 the Gram Panchayat granted NOC for the compound wall. On 5.5.1996 the Gram Panchayat issued three NOC for putting up tailoring workshop.

On 21.5.1996 NOC was issued for carrying out construction of structure wherein it was mentioned that the proper permission be taken from the Collector. On 3.6.1996, the Petitioners applied to the Collector for permission for change of user of the plot, to non-agricultural purpose as also for putting up industrial construction. The application was in the prescribed form. Along with application, covering letter and documents were forwarded. The Petitioners were informed by the Collector's Office by letter of 7.6.1996 that the application was sent to the office of the Assistant Director Town Planning. The District Health Officer has issued him N.O.C. The Port officer issued N.O.C. On 23.12.1996 MIDC issued NOC. The Hydrographer, Maharashtra State issued certificate on 7.11.1996. Based on that the Petitioners were granted permission by the Collector by his order dated 12.4.1997. While granting permission, a condition was imposed that the plan for carrying out sanction of the construction should be prepared as per provisions of Annexure II of Maharashtra Land Revenue (change in utilisation of land and N.A. charges) Rules, 1969 and sanction should be obtained before starting construction work from the Collector and no changes can be made in the sanctioned plan before obtaining sanction from the concerned officer. It is the case of the Petitioner that based on the said approvals granted

they have put up construction. It is after this that the impugned orders which have been referred to earlier have been issued and it is the subject matter of the present petition. On behalf of the Petitioner it is submitted that plans were annexed as required for obtaining N.O.C. and approval was granted by the Collector including to the plans and in such circumstances, there was nothing further required to be done in so far as petitioners are concerned.

3. On behalf of the contesting respondents Eknath Krishnaji Patil has filed affidavit. It is firstly contended that the orders are appellable and as such this court should not entertain the petition. It is then set out that the construction put up is illegal and further the construction was without taking permission from the Collector. Reference is made to NA permission dated 12.4.1997 which clearly states and imposes the condition of obtaining prior permission from the Collector for construction work Such application was not moved for approval. It is therefore, submitted that as the construction was put up without the said approval and as the conditions were violated there is no illegality in teh order passed. It is also pointed out that the permission granted by the Port Officer is also invalid as the petitioner has breached the conditions.

4. After haring the parties, the question really is as to whether there has been any serious illegality committed by the petitioners warranting notice as issued by the respondents which are the subject matter of the present petition. As referred to earlier, the petitioners have to obtain necessary permissions. The crux of the matter is the so called violation by the petitioners of condition No. 5 in the permission granting change of user of the land. Before dealing with that, we may also consider the contentions advanced on behalf of the respondents that the petitioners have alternate remedy by way of appeal.

5. Petition was admitted after the respondents had filed their reply on 25.6.1998. No liberty was reserved to the petitioners to raise that issue again when the petition was admitted on 1.7.1998 after having heard learned counsel for the Petitioner and Respondent. Once that be the case, it is really not open to the Respondents who wre given notice before admission and who appeared, now at the stage of final hearing in the absence of leave being granted by the court, to raise the same plea once again. Apart from that it is not as if this court is divested from exercising its extra ordinary jurisdiction, in fit and proper cases, where the orders are patently illegal and even

otherwise this court can always exercise that direction so that the interest of justice are satisfied.

6. With the above, we may now consider whether the contention as raised on behalf of the Respondent can be sustained. The Respondent Collector had granted N.A. permission. In other words, part of the land which was permitted to be used for non agricultural purpose, permission could not have been granted if it would have violated Schedule II of the rules. Perusal of Schedule II would show that what is required to be considered is the building line and control line. Once permission was granted, it is presumed that the respondents have addressed themselves to the issue that there is no violation in putting up the construction to the extent of the area which is permitted for construction. In so far as App.II is concerned, once again condition is that the applicants shall observe standards of the building and control line of area marked on the map annexed and they left the remaining area of the said plot as an open space. If this is seen with the plan which is on record and which is approved by the Collector at the time of granting N.A. permission, it would be clear that the petitioner had complied with formalities of submitting the plan. The fact that the plan was submitted along with other documents at the time of

N.A. permission would not mean that the petitioners once again would be called upon to file a fresh plan if the plan had already been submitted and approved. In the instant case, plan was submitted and approved and in these circumstances, to our mind the orders issued would be clearly without jurisdiction as there has been compliance by the petitioners of the requirement of the N.A. rules. Calling on the petitioners to once again submit the same plan which has been approved, would be an empty formality.

7. We however, make it clear that it will be open to the respondent, if petitioners have constructed in violation of the N.A. permission namely that the construction having put up on the area other than on which N.A. permission was granted, then to take steps in law which they may be entitled to. Considering above, the petition made absolute in terms of Prayer Clauses (a) and (b) subject to what is set out in the order.

(F.I. REBELLO,J.)

(S.P. KUKDAY,J.)